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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FELIPE CHAVEZ GONZALEZ,

Defendant and Appellant.

E069620

(Super.Ct.No. RIF1401954)

OPINION

APPEAL from the Superior Court of Riverside County. Jorge C. Hernandez,
Judge. Affirmed.

Stephen M. Lathrop, under appointment by the Court of Appeal, for Defendant
and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, and Robin Urbanski and Heidi
Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Felipe Chavez Gonzalez of four charges, including kidnapping for robbery, robbery, assault with a firearm, and second degree burglary, all arising from the same incident, a robbery of a fast food restaurant. On appeal, defendant argues that the only evidence that connects him to the crimes is uncorroborated accomplice testimony, so his convictions must be reversed. We find the accomplice testimony to be adequately corroborated and therefore affirm the judgment.

I. FACTS

According to the prosecution, in September 2013 defendant, together with Nayeli Serafin and Ricardo de la Torre Aceves, robbed a restaurant where Serafin worked as a shift manager.¹ On the night of the robbery, Serafin and a coworker (Jane Doe²) were working the closing shift. After the restaurant had closed, and after Serafin sent defendant a text signal that it was time, the two men entered through a door Serafin had unlocked for them. When the men entered, Doe was washing equipment at a sink and Serafin was in the restroom. Aceves moved Doe at gunpoint to the restaurant's walk-in freezer, where he taped her hands and face with duct tape. Meanwhile, defendant and Serafin gathered the restaurant's cash in a backpack. Defendant and Serafin then told

¹ Defendant, Serafin, and Aceves were charged as codefendants in a single felony complaint. Defendant's trial, which gave rise to this appeal, was conducted separately from that of Serafin and Aceves. Serafin and Aceves were tried together, but with two juries. In an unpublished opinion, we affirmed Serafin's conviction. (See *People v. Serafin* (Aug. 24, 2018, E067265) [nonpub. opn.])

² As in our opinion in the appeal arising from Serafin's conviction, we refer to Serafin's coworker as Jane Doe because that is how she was named in the felony complaint.

Aceves to hit Serafin so that it would seem as if she were a victim, rather than a perpetrator. Aceves did so, causing Serafin's lip to bleed a little bit, and then the two men tied her up with duct tape and went to put her in the walk-in freezer with Doe. When they did so, the robbers found Doe had managed to partially free herself from her restraints. Aceves threw Doe to the floor, tied her up again, and threatened to kill her if she moved. As the robbers left, defendant broke the glass of a door to try to make it appear that was how they had gained entry. A responding police officer, however, observed that the glass had been broken outwards, from the inside of the restaurant.

After Doe had partially freed herself from her restraints while the robbers were still in the restaurant, she triggered a silent alarm that had been installed in the freezer after a similar robbery. After she was restrained by Aceves for the second time, she was again able to free herself from her restraints, as was Serafin. As the women discussed what to do next, Doe observed that Serafin was not nervous about the possibility that the robbers were still at the restaurant, but she "got scared" when she learned Doe had triggered the silent alarm and law enforcement was on the way. Law enforcement arrived shortly thereafter, as the two women exited the restaurant.

After the robbery, Serafin and Doe were both transported to the same hospital for treatment. At the hospital, when Doe was moved, at her request, to be in a room with Serafin, defendant was with her. Doe observed that defendant was very angry at Serafin. When both Serafin and Doe were released after a few hours, Doe asked Serafin for a ride home. Serafin did not want to do so, but eventually agreed after Doe insisted. Doe recalled that defendant never asked her whether she was okay, or otherwise inquired

about what happened to her. Defendant drove them from the hospital in Serafin's red car; Doe had noticed earlier that Serafin had not used the car to get to work that day. Doe asked that defendant and Serafin stop by the restaurant so she could pick up her belongings. Serafin said that she did not want to go to the restaurant because their boss would be there, and they instead took Doe straight home. During the ride, Doe observed that defendant continued to be "very mad and very upset" with Serafin.

Doe was able to identify Aceves from a photographic lineup as the robber who confronted her, moved her at gunpoint to the walk-in freezer, and tied her up with duct tape. Doe was unable to identify the second robber, except to observe that he appeared male and had a thin build.

During trial, Doe identified defendant as Serafin's boyfriend at the time of the robbery. Though Serafin usually drove herself to work in her red car, defendant had sometimes dropped Serafin off, and he had been at the restaurant many times.³ Doe knew defendant well enough to recognize his face and voice. During the robbery, however, the robber who entered the store with Aceves wore a mask and Doe did not hear him speak. Also, when the robbers discovered Doe had managed to partially free herself from her restraints and her eyes were not covered, the second man moved "very quickly" to stand behind a door while Aceves tied her up again and placed Serafin in the freezer with her.

³ The store manager also testified that she recognized defendant as Serafin's boyfriend ("Felipe") at the time of the robbery; she was familiar with him from his many visits to the restaurant, and knew him as "Felipe."

Aceves was arrested and interviewed by law enforcement. In an audio-recorded interview with a detective, played for the jury at trial, he admitted he had committed the robbery with Serafin and an accomplice. Aceves included many details that implicated defendant as the accomplice. In the interview, Aceves stated that he asked his cousin, whom he called “Felipe Chavez,” to borrow some money to pay rent. Chavez invited him instead to participate in robbing the restaurant where his girlfriend “Nayeli” worked, which they (Chavez and Serafin) had already robbed once before. Chavez provided Aceves with a gun, a toy pistol that had been modified to appear more real. Aceves’s job was to scare Serafin’s coworker with the gun and tie her up. On the night of the robbery, Chavez picked Aceves up in a red car that Aceves understood to belong to Chavez and Serafin. Chavez wore clothing that entirely covered him, including long sleeves, a ski mask, and gloves. Aceves described Chavez as having a thin build. Aceves did not have a mask or gloves because Chavez told him he did not need them. Serafin and Chavez lived about two blocks from the restaurant, and Chavez parked near their house, but not on the same street, to wait for Serafin’s signal. Aceves described the details of the robbery at length, from the moment they entered the store and he confronted Doe to the breaking of the door as they left. After the robbery, Aceves and Chavez walked back to the car, and then drove to defendant’s apartment. Chavez went inside, changed clothes, and then came back to the car. Chavez took the pistol back from Aceves, gave him \$200, and drove him home.

At trial, Aceves initially testified that he committed the robbery on his own. Subsequently, after his interview with police was played for the jury, Aceves admitted to

robbing the restaurant with Serafin and someone named “Felipe Chavez,” but he testified that he had referred to someone other than defendant; he denied knowing defendant.

Aceves admitted that he knew the “Felipe Chavez” with whom he committed the robbery through Serafin, but he denied knowing whether they were boyfriend and girlfriend. He testified that “Felipe Chavez” drove him to a place near the restaurant in a red car where they waited until Serafin gave them the signal. Aceves further testified that he did not wear a mask and gloves during the robbery, but that “Felipe Chavez” did.

Serafin refused to testify at defendant’s trial. Her statement to police, discussed in our unpublished opinion addressing her convictions, was not presented to defendant’s jury. (See *People v. Serafin, supra*, E067265.) The detective who interviewed Serafin did testify at defendant’s trial. Among other things, he testified that during his investigation, he drove with Serafin to her home, which was located a block or block and a half from the restaurant. The detective also determined that Serafin owned a red car.

Defendant did not testify in his own defense, and the defense did not put on any other affirmative evidence.

The jury returned guilty verdicts on all charges, including kidnapping for robbery (Pen. Code,⁴ § 209, subd. (b)(1); count 1), robbery (§ 211; count 2), assault with a firearm (§ 245, subd. (a)(2); count 3), and second degree burglary (§ 459; count 4). Defendant received a sentence of seven years to life.

⁴ Further undesignated statutory references are to the Penal Code.

II. DISCUSSION

Defendant contends that the evidence presented at trial was insufficient to corroborate Aceves's statements implicating him in the robbery. We disagree.

A. *Applicable Law*

“Section 1111 prohibits a defendant from being convicted on the uncorroborated testimony of an accomplice.” (*People v. Nelson* (2011) 51 Cal.4th 198, 217 (*Nelson*).) Section 1111 applies not only to testimony given at trial, but also “to an accomplice’s out-of-court statements when such statements are used as substantive evidence of guilt.” (*People v. Andrews* (1989) 49 Cal.3d 200, 214, overruled on other grounds as stated in *People v. Trevino* (2001) 26 Cal.4th 237.) ““Section 1111 serves to ensure that a defendant will not be convicted solely upon the testimony of an accomplice because an accomplice is likely to have self-serving motives.”” (*People v. Garton* (2018) 4 Cal.5th 485, 518.)

For the jury to rely on an accomplice’s testimony, “it must find evidence that, ““without aid from the accomplice’s testimony, tend[s] to connect the defendant with the crime.””” (*People v. Romero and Self* (2015) 62 Cal.4th 1, 32.) ““The entire conduct of the parties, their relationship, acts, and conduct may be taken into consideration by the trier of fact in determining the sufficiency of the corroboration.”” (*Ibid.*) The evidence ““need not independently establish the identity”” of the perpetrator, nor “corroborate every fact to which the accomplice testifies,” and “““may be circumstantial or slight and entitled to little consideration when standing alone.””” (*Ibid.*) “The prosecution is not required to single out an isolated fact which in itself, unrelated to other proven facts, is

considered to be sufficient corroboration. It is the combined and cumulative weight of the evidence furnished by non-accomplice witnesses which supplies the test.” (*People v. Trujillo* (1948) 32 Cal.2d 105, 111.)

In reviewing the sufficiency of the evidence to support a defendant’s conviction, we “view the evidence in the light most favorable to respondent and presume in support of the judgment the existence of every fact the trier of fact reasonably could deduce from the evidence.” (*People v. Vu* (2006) 143 Cal.App.4th 1009, 1024.) “The trier of fact’s determination on the issue of corroboration is binding on review unless the corroborating evidence should not have been admitted or does not reasonably tend to connect the defendant with the commission of the crime.” (*Nelson, supra*, 51 Cal.4th at p. 218.)

B. *Analysis*

In our view, Aceves’s trial testimony and statements to police are sufficiently corroborated to satisfy the requirements of section 1111. There was no direct, non-accomplice evidence establishing defendant was the masked man who participated, along with Aceves and Serafin, in the charged offenses. Nevertheless, taken collectively, adequate circumstantial evidence, independent of Aceves’s statements to police and testimony at trial, reasonably tends to connect defendant to the charged crimes.

Independent evidence certainly corroborated Aceves’s testimony that (a) the robbers had help from an insider at the restaurant and (b) that insider was Serafin. Aceves told police that he committed the robbery with “Felipe Chavez” and the help of Chavez’s girlfriend “Nayeli” who worked at the restaurant. Nayeli is Serafin’s first name. The glass door that had been kicked outwards suggested a bungled attempt to

disguise an inside job. Since Doe and Serafin were the only two employees on duty at the time of the robbery, and since Doe testified she was a victim, the circumstances and the physical evidence strongly implicated Serafin and corroborated Aceves's statement that she was involved.

The remaining, and more complicated, question is whether adequate independent evidence established that defendant was the masked robber. Given that Serafin participated in the robbery, it is a reasonable inference that the masked robber would be someone with close ties to her. Two non-accomplice witnesses, Doe and the restaurant manager, identified defendant as someone they knew as Serafin's boyfriend at the time of the robbery, and the restaurant manager testified that she knew his name to be "Felipe." As Serafin's boyfriend, defendant came to the hospital to visit her and pick her up after the robbery.

Apart from defendant's close ties to Serafin, her residence location and car provided some evidence that defendant was the masked robber. Aceves stated that his accomplices lived together a couple of blocks from the restaurant. The detective who dropped Serafin off at her home during his investigation of the robbery observed that she lived a block or a block and a half from the restaurant. Aceves said that Serafin and his accomplice shared a red car that the accomplice used the night of the robbery to pick him up and drop him off. The detective confirmed that Serafin owned a red car. And Doe testified that Serafin did not drive her red car to work the night of the robbery, as she usually did. Doe further testified that defendant sometimes dropped Serafin off at work, and that defendant drove both Serafin and Doe home from the hospital a few hours after

the robbery using that red car. At trial, Aceves denied that defendant was the “Felipe Chavez” he described as his accomplice in his interview with police. The jury, however, was free to disbelieve Aceves’s trial testimony on that issue.

Doe testified that, even though the robber who accompanied Aceves was masked and gloved, he made extraordinary efforts to stay out of her sight and hearing. He jumped “very quickly” behind a door when he saw Doe had worked her way free of her restraints and her eyes were not covered, and he refrained from speaking in her presence. A reasonable inference from this testimony (even if not the only possible inference) is that the masked robber had particular cause to be concerned about being recognized by Doe. Doe testified that she was familiar with defendant’s face and voice.

Finally, Doe’s observations of defendant at the hospital also provided evidence that could indicate he was the robber. Doe testified that, in the hospital after the robbery and while giving her a ride home, defendant appeared very angry with Serafin. He also never asked Doe about how she was doing, or asked her about what had happened. There are, of course, many reasons why defendant might have been angry with Serafin, or chosen not to ask about Doe’s wellbeing or what had happened to her. But it is at least unusual behavior for a boyfriend when his girlfriend and coworker are hospitalized following a robbery. Viewed in the light most favorable to the judgment, defendant’s behavior is arguably an indication of consciousness of guilt. That is, from this perspective, defendant did not have to ask Doe about what had happened, because he already knew.

In sum, then, the jury was presented with non-accomplice evidence (direct or circumstantial) that Serafin participated in the robbery. With this established, the jury was presented with adequate non-accomplice evidence that defendant was the masked robber because: (1) the robbery was an inside job, in which Serafin participated, so the masked robber was likely someone with close ties to Serafin; (2) defendant was Serafin's boyfriend at the time of the robbery; (3) on the date of the robbery, defendant had access to and in fact drove a red car consistent with Aceves's description of the car his accomplice drove; (4) Serafin lived within blocks of the restaurant, consistent with Aceves's description of his accomplices' residence; (5) the masked robber behaved in an evasive manner arguably suggesting that he was someone well known not only to Serafin, but also to Doe; (6) Doe was familiar with defendant's face and voice from his many times being in the restaurant to visit Serafin; (7) although Doe did not see the masked robber's face or hear his voice, what she did see was not inconsistent with defendant's appearance (like defendant, the masked robber was a man with a thin build); and (8) at the hospital shortly after the robbery, defendant behaved in a manner arguably suggesting consciousness of guilt. The jury reasonably could have concluded that these individual facts, even if insufficient standing alone, together add up to some evidence tending to establish that defendant was the masked robber, and therefore constitute sufficient non-accomplice corroboration. (See *Nelson, supra*, 51 Cal.4th at p. 218; *People v. Trujillo, supra*, 32 Cal.2d at p. 111.)

Defendant suggests that *People v. Robinson* (1964) 61 Cal.2d 373 requires a different conclusion. It does not. In *Robinson*, the Supreme Court held that a defendant's

fingerprints on a car linked to a murder was insufficient to corroborate an accomplice's testimony implicating the defendant. (*Id.* at pp. 398-399.) The Supreme Court noted that the fingerprint expert could not establish when the fingerprints were placed on the car, and that the defendant had told police he had ridden in the car, which belonged to an acquaintance, earlier on the night of the murder. (*Ibid.*) The fingerprints, therefore, established "association" with someone participating in the crime, but did not establish any connection between the defendant and the crime itself. (*Id.* at pp. 398-400.) Applying this reasoning here, defendant is correct that evidence that he was Serafin's boyfriend and that he drove her red car sometimes, including on the date of the robbery, would be insufficient, standing alone, to corroborate Aceves's statements to police. As discussed above, however, that is not the full extent of the corroborating evidence introduced at trial.

Similarly, in *People v. Pedroza* (2014) 231 Cal.App.4th 635, another case emphasized by defendant, the Court of Appeal found accomplice testimony to be insufficiently corroborated, because the evidence only showed that the defendant was in the same gang as the victim and the accomplice, the gang was "experiencing frequent in-house murders," and the defendant was with the accomplice and other gang members at least three hours after the murder took place and away from the crime scene. (*Id.* at p. 651.) Here, in contrast, there is at least some circumstantial evidence tending to connect defendant not only to his accomplices, but also to the crime itself. As such, Aceves's statement to police implicating defendant in the charged crimes was adequately corroborated.

III. DISPOSITION

The judgment is affirmed.

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RAPHAEL

J.

We concur:

RAMIREZ

P. J.

MILLER

J.